

WAIS INC

RES

## Indemnification Agreement

CHRISTOPHER J. YOUNGER

ATTORNEY AT LAW

WILSON SONSINI GOODRICH & ROSATI

650 PAGE MILL ROAD

PALO ALTO, CALIFORNIA 94304-1050

TELEPHONE 415-493-9300

FACSIMILE 415-493-6811

## INDEMNIFICATION AGREEMENT

This Indemnification Agreement ("Agreement") is made as of this \_\_\_\_ day of \_\_\_\_\_, 19\_\_ by and between Wide Area Information Servers, Inc., a California corporation (the "Company"), and \_\_\_\_\_ ("Indemnatee").

**WHEREAS**, the Company and Indemnatee recognize the increasing difficulty in obtaining directors' and officers' liability insurance, the significant increases in the cost of such insurance and the general reductions in the coverage of such insurance;

**WHEREAS**, the Company and Indemnatee further recognize the substantial increase in corporate litigation in general, subjecting officers and directors to expensive litigation risks at the same time as the availability and coverage of liability insurance has been severely limited;

**WHEREAS**, Indemnatee does not regard the current protection available as adequate under the present circumstances, and Indemnatee and other officers and directors of the Company may not be willing to continue to serve as officers and directors without additional protection; and

**WHEREAS**, the Company desires to attract and retain the services of highly qualified individuals, such as Indemnatee, to serve as officers and directors of the Company and to indemnify its officers and directors so as to provide them with the maximum protection permitted by law.

**NOW, THEREFORE**, the Company and Indemnatee hereby agree as follows:

**1.     Indemnification.**

(a)     Third Party Proceedings. The Company shall indemnify Indemnatee if Indemnatee is or was a party or is threatened to be made a party to any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Company) by reason of the fact that Indemnatee is or was a director, officer, employee or agent of the Company, or any subsidiary of the Company, by reason of any action or inaction on the part of Indemnatee while an officer or director or by reason of the fact that Indemnatee is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement (if such settlement is approved in advance by the Company, which approval shall not be unreasonably withheld) actually and reasonably incurred by Indemnatee in connection with such action or proceeding if Indemnatee acted in good faith and in a manner Indemnatee believed to be in the best interests of the Company and its shareholders, and, with respect to any criminal action or proceeding, had no reasonable cause to believe Indemnatee's conduct was unlawful. The termination of any action or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that (i) Indemnatee did not act in good faith and in a manner which Indemnatee reasonably believed to be in the best interests of the Company, or (ii) with

respect to any criminal action or proceeding, Indemnatee had reasonable cause to believe that Indemnatee's conduct was unlawful.

(b) Proceedings By or in the Right of the Company. The Company shall indemnify Indemnatee if Indemnatee was or is a party or is threatened to be made a party to any threatened, pending or completed action or proceeding by or in the right of the Company or any subsidiary of the Company to procure a judgment in its favor by reason of the fact that Indemnatee is or was a director, officer, employee or agent of the Company, or any subsidiary of the Company, by reason of any action or inaction on the part of Indemnatee while an officer or director or by reason of the fact that Indemnatee is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) and, to the fullest extent permitted by law, amounts paid in settlement, in each case to the extent actually and reasonably incurred by Indemnatee in connection with the defense or settlement of such action or proceeding if Indemnatee acted in good faith and in a manner Indemnatee believed to be in the best interests of the Company and its shareholders.

## **2. Expenses; Indemnification Procedure.**

(a) Advancement of Expenses. The Company shall advance all expenses incurred by Indemnatee in connection with the investigation, defense, settlement or appeal of any civil or criminal action or proceeding referenced in Section 1(a) or (b) hereof (but not amounts actually paid in settlement of any such action or proceeding). Indemnatee hereby undertakes to repay such amounts advanced only if, and to the extent that, it shall ultimately be determined that Indemnatee is not entitled to be indemnified by the Company as authorized hereby. The advances to be made hereunder shall be paid by the Company to Indemnatee within 20 days following delivery of a written request therefor by Indemnatee to the Company.

(b) Notice/Cooperation by Indemnatee. Indemnatee shall, as a condition precedent to his right to be indemnified under this Agreement, give the Company notice in writing as soon as practicable of any claim made against Indemnatee for which indemnification will or could be sought under this Agreement. Notice to the Company shall be directed to the President of the Company at the address shown on the signature page of this Agreement (or such other address as the Company shall designate in writing to Indemnatee). Notice shall be deemed received three business days after the date postmarked if sent by domestic certified or registered mail, properly addressed; otherwise notice shall be deemed received when such notice shall actually be received by the Company. In addition, Indemnatee shall give the Company such information and cooperation as it may reasonably require and as shall be within Indemnatee's power.

(c) Procedure. Any indemnification provided for in Section 1 shall be made no later than 45 days after receipt of the written request of Indemnatee. If a claim under this Agreement, under any statute, or under any provision of the Company's Articles of Incorporation or Bylaws providing for indemnification, is not paid in full by the Company within 45 days after a written request for payment

thereof has first been received by the Company, Indemnatee may, but need not, at any time thereafter bring an action against the Company to recover the unpaid amount of the claim and, subject to Section 13 of this Agreement, Indemnatee shall also be entitled to be paid for the expenses (including attorneys' fees) of bringing such action. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in connection with any action or proceeding in advance of its final disposition) that Indemnatee has not met the standards of conduct which make it permissible under applicable law for the Company to indemnify Indemnatee for the amount claimed, and Indemnatee shall be entitled to receive interim payments of expenses pursuant to Subsection 2(a) unless and until such defense may be finally adjudicated by court order or judgment from which no further right of appeal exists. It is the parties' intention that if the Company contests Indemnatee's right to indemnification, the question of Indemnatee's right to indemnification shall be for the court to decide, and neither the failure of the Company (including its Board of Directors, any committee or subgroup of the Board of Directors, independent legal counsel, or its shareholders) to have made a determination that indemnification of Indemnatee is proper in the circumstances because Indemnatee has met the applicable standard of conduct required by applicable law, nor an actual determination by the Company (including its Board of Directors, any committee or subgroup of the Board of Directors, independent legal counsel, or its shareholders) that Indemnatee has not met such applicable standard of conduct, shall create a presumption that Indemnatee has or has not met the applicable standard of conduct.

(d) Notice to Insurers. If, at the time of the receipt of a notice of a claim pursuant to Section 2(b) hereof, the Company has director and officer liability insurance in effect, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnatee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

(e) Selection of Counsel. In the event the Company shall be obligated under Section 2(a) hereof to pay the expenses of any proceeding against Indemnatee, the Company, if appropriate, shall be entitled to assume the defense of such proceeding, with counsel approved by Indemnatee, which approval shall not be unreasonably withheld, upon the delivery to Indemnatee of written notice of its election so to do. After delivery of such notice, approval of such counsel by Indemnatee and the retention of such counsel by the Company, the Company will not be liable to Indemnatee under this Agreement for any fees of counsel subsequently incurred by Indemnatee with respect to the same proceeding, provided that (i) Indemnatee shall have the right to employ his counsel in any such proceeding at Indemnatee's expense; and (ii) if (A) the employment of counsel by Indemnatee has been previously authorized by the Company, (B) Indemnatee shall have reasonably concluded that there may be a conflict of interest between the Company and Indemnatee in the conduct of any such defense or (C) the Company shall not, in fact, have employed counsel to assume the defense of such proceeding, then the fees and expenses of Indemnatee's counsel shall be at the expense of the Company.

### **3. Additional Indemnification Rights; Nonexclusivity.**

(a) **Scope.** Notwithstanding any other provision of this Agreement, the Company hereby agrees to indemnify the Indemnitee to the fullest extent permitted by law, notwithstanding that such indemnification is not specifically authorized by the other provisions of this Agreement, the Company's Articles of Incorporation, the Company's Bylaws or by statute. In the event of any change, after the date of this Agreement, in any applicable law, statute or rule which expands the right of a California corporation to indemnify a member of its board of directors, an officer or other corporate agent, such changes shall be, ipso facto, within the purview of Indemnitee's rights and Company's obligations, under this Agreement. In the event of any change in any applicable law, statute or rule which narrows the right of a California corporation to indemnify a member of its Board of Directors, an officer or other corporate agent, such changes, to the extent required by such law, statute or rule to be applied to this Agreement, shall have the effect on this Agreement and the parties' rights and obligations hereunder as is required by such law, statute or rule.

(b) **Nonexclusivity.** The indemnification provided by this Agreement shall not be deemed exclusive of any rights to which Indemnitee may be entitled under the Company's Articles of Incorporation, its Bylaws, any agreement, any vote of shareholders or disinterested directors, the California General Corporation Law, or otherwise, both as to action in Indemnitee's official capacity and as to action in another capacity while holding such office. The indemnification provided under this Agreement shall continue as to Indemnitee for any action taken or not taken while serving in an indemnified capacity even though he may have ceased to serve in such capacity at the time of any action or other covered proceeding.

4. **Partial Indemnification.** If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of the expenses, judgments, fines or penalties actually or reasonably incurred by him in the investigation, defense, appeal or settlement of any civil or criminal action or proceeding, but not, however, for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion of such expenses, judgments, fines or penalties to which Indemnitee is entitled.

5. **Mutual Acknowledgement.** Both the Company and Indemnitee acknowledge that in certain instances, Federal law or applicable public policy may prohibit the Company from indemnifying its directors and officers under this Agreement or otherwise. Indemnitee understands and acknowledges that the Company has undertaken or may be required in the future to undertake with the Securities and Exchange Commission to submit the question of indemnification to a court in certain circumstances for a determination of the Company's right under public policy to indemnify Indemnitee.

6. **Directors' and Officers' Liability Insurance.** The Company shall, from time to time, make the good faith determination whether or not it is practicable for the Company to obtain and maintain a policy or policies of insurance with reputable insurance companies providing the officers and directors of the Company with coverage for losses from wrongful acts, or to ensure the Company's performance of its indemnification obligations under this Agreement. Among other considerations, the Company will weigh the costs of obtaining such insurance coverage against the protection afforded by such coverage.

In all policies of directors' and officers' liability insurance, Indemnatee shall be named as an insured in such a manner as to provide Indemnatee the same rights and benefits as are accorded to the most favorably insured of the Company's directors, if Indemnatee is a director; or of the Company's officers, if Indemnatee is not a director of the Company but is an officer; or of the Company's key employees, if Indemnatee is not an officer or director but is a key employee. Notwithstanding the foregoing, the Company shall have no obligation to obtain or maintain such insurance if the Company determines in good faith that such insurance is not reasonably available, if the premium costs for such insurance are disproportionate to the amount of coverage provided, if the coverage provided by such insurance is limited by exclusions so as to provide an insufficient benefit, or if Indemnatee is covered by similar insurance maintained by a subsidiary or parent of the Company.

7. **Severability.** Nothing in this Agreement is intended to require or shall be construed as requiring the Company to do or fail to do any act in violation of applicable law. The Company's inability, pursuant to court order, to perform its obligations under this Agreement shall not constitute a breach of this Agreement. The provisions of this Agreement shall be severable as provided in this Section 7. If this Agreement or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify Indemnatee to the full extent permitted by any applicable portion of this Agreement that shall not have been invalidated, and the balance of this Agreement not so invalidated shall be enforceable in accordance with its terms.

8. **Exceptions.** Any other provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement:

(a) **Excluded Acts.** To indemnify Indemnatee for any acts or omissions or transactions from which a director may not be relieved of liability under the California General Corporation Law.

(b) **Claims Initiated by Indemnatee.** To indemnify or advance expenses to Indemnatee with respect to proceedings or claims initiated or brought voluntarily by Indemnatee and not by way of defense, except with respect to proceedings brought to establish or enforce a right to indemnification under this Agreement or any other statute or law or otherwise as required under Section 317 of the California General Corporation Law, but such indemnification or advancement of expenses may be provided by the Company in specific cases if the Board of Directors has approved the initiation or bringing of such suit; or

(c) **Lack of Good Faith.** To indemnify Indemnatee for any expenses incurred by the Indemnatee with respect to any proceeding instituted by Indemnatee to enforce or interpret this Agreement, if a court of competent jurisdiction determines that each of the material assertions made by the Indemnatee in such proceeding was not made in good faith or was frivolous; or

(d) **Insured Claims.** To indemnify Indemnatee for expenses or liabilities of any type whatsoever (including, but not limited to, judgments, fines, ERISA excise taxes or penalties, and amounts

paid in settlement) which have been paid directly to Indemnatee by an insurance carrier under a policy of directors' and officers' liability insurance maintained by the Company; or

(e) Claims Under Section 16(b). To indemnify Indemnatee for expenses and the payment of profits arising from the purchase and sale by Indemnatee of securities in violation of Section 16(b) of the Securities Exchange Act of 1934, as amended, or any similar successor statute.

9. Effectiveness of Agreement. To the extent that the indemnification permitted under the terms of certain provisions of this Agreement exceeds the scope of the indemnification expressly permitted by Section 317 of the California General Corporation Law, such provisions shall not be effective unless and until the Company's Articles of Incorporation authorize such additional rights of indemnification. In all other respects, the balance of this Agreement shall be effective as of the date set forth on the first page and may apply to acts or omissions of Indemnatee which occurred prior to such date if Indemnatee was an officer, director, employee or other agent of the Company, or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, at the time such act or omission occurred.

10. Construction of Certain Phrases.

(a) For purposes of this Agreement, references to the "Company" shall also include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that if Indemnatee is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, Indemnatee shall stand in the same position under the provisions of this Agreement with respect to the resulting or surviving corporation as Indemnatee would have with respect to such constituent corporation if its separate existence had continued.

(b) For purposes of this Agreement, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on Indemnatee with respect to an employee benefit plan; and references to "serving at the request of the Company" shall include any service as a director, officer, employee or agent of the Company which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants, or beneficiaries.

11. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original.



12. **Successors and Assigns.** This Agreement shall be binding upon the Company and its successors and assigns, and shall inure to the benefit of Indemnatee and Indemnatee's estate, heirs, legal representatives and assigns.

13. **Attorneys' Fees.** In the event that any action is instituted by Indemnatee under this Agreement to enforce or interpret any of the terms hereof, Indemnatee shall be entitled to be paid all costs and expenses, including reasonable attorneys' fees, incurred by Indemnatee with respect to such action, unless as a part of such action, a court of competent jurisdiction determines that each of the material assertions made by Indemnatee as a basis for such action were not made in good faith or were frivolous. In the event of an action instituted by or in the name of the Company under this Agreement or to enforce or interpret any of the terms of this Agreement, Indemnatee shall be entitled to be paid all costs and expenses, including reasonable attorneys' fees, incurred by Indemnatee in defense of such action (including with respect to Indemnatee's counterclaims and cross-claims made in such action), unless as a part of such action the court determines that each of Indemnatee's material defenses to such action were made in bad faith or were frivolous.

14. **Notice.** All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed duly given (i) if delivered by hand and receipted for by the party addressee, on the date of such receipt, or (ii) if mailed by domestic certified or registered mail with postage prepaid, on the third business day after the date postmarked. Addresses for notice to either party are as shown on the signature page of this Agreement, or as subsequently modified by written notice.

15. **Consent to Jurisdiction.** The Company and Indemnatee each hereby irrevocably consent to the jurisdiction of the courts of the State of California for all purposes in connection with any action or proceeding which arises out of or relates to this Agreement and agree that any action instituted under this Agreement shall be brought only in the state courts of the State of California.

16. **Choice of Law.** This Agreement shall be governed by and its provisions construed in accordance with the laws of the State of California as applied to contracts between California residents entered into and to be performed entirely within California.

[This space intentionally left blank.]

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first above written.

**WIDE AREA INFORMATION SERVERS, INC.**

By: \_\_\_\_\_

Title: \_\_\_\_\_

1040 Noel Drive  
Menlo Park, California 94025

**AGREED TO AND ACCEPTED:**

**INDEMNITEE:**

\_\_\_\_\_  
(type name)

\_\_\_\_\_  
(signature)

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_